UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOTICE TO ALIEN WIDOWS AND WIDOWERS OF UNITED STATES CITIZENS: A CLASS ACTION LAWSUIT MAY AFFECT YOUR ABILITY TO IMMIGRATE.

A court authorized this notice. This is not a solicitation from a lawyer.

A class action lawsuit may affect your ability to immigrate to the United States if:

- You are an alien who married a United States citizen;
- Your spouse filed a petition so that you could immigrate, but
- Your citizen spouse died while the case was pending.

Several alien widow(er)s of citizens have sued the Secretary of Homeland Security (DHS) and the Director of the U.S. Citizenship and Immigration Services (USCIS). The widow(er)s claim that they remain eligible to immigrate if their citizen spouses filed a petition and died while their cases were pending. The name of this case is *Hootkins v. Napolitano,* No. CV 07-5696, and it is pending before Judge Christina A. Snyder of the United States District Court for the Central District of California (Los Angeles). The Court has allowed the lawsuit to be a class action on behalf of two groups:

- All aliens whose United States citizen spouse died before the couple's two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

- All aliens who, within ninety days of admission to the United States as a nonimmigrant fiance, married the petitioning United States citizen, and whose citizen spouse died before the couple's two-year wedding anniversary, so long as he or she can also demonstrate that the citizen spouse filed an I-129F petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form 1-129F petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

The Ninth Circuit includes the following states and territories: *Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Marianas Islands, Oregon, and Washington*.

The Court has not decided what legal rights you may have under the immigration laws, but your legal rights are affected by this case because the Court has allowed the lawsuit to be a class action. Because this case is a class action, you have a choice that you have to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

- **DO NOTHING. Stay in this lawsuit. Await the outcome. Give up your right to file your own lawsuit.**

If you do nothing, you will be bound by the Court's decision in this case. This means that, if the Court decides in favor of the Class, the decision will also be in your favor, and you may be entitled to a new decision in your immigration case. It also means that if the Court decides the case in favor of DHS and USCIS, and against the Class, the decision will also be against you. If you are a member of the defined class, and do not ask to be excluded from this lawsuit, you give up any rights to sue DHS or USCIS separately about the same legal claims in this lawsuit. The case is scheduled for a hearing on April 20, 2009. If the Court rules in favor of DHS and USCIS, you will be bound by the Court's decision. If the Court rules in favor of the Class, you will be notified about what you must do to obtain a new decision on the basis of the court's decision.

- **ASK TO BE EXCLUDED BEFORE APRIL 6, 2009. Get out of this lawsuit. Get no benefits from it. Keep your right to file your own lawsuit.**

If you ask to be excluded from this case, you will not be a part of this case. If the Court rules in favor of the Class, you won't be entitled to any benefit from that decision. If you ask to be excluded from this case, and the Court rules in favor of DHS and USCIS, you could still sue DHS or USCIS separately about the same legal claims in your own lawsuit.

BASIC INFORMATION

Why did I get this notice?

You received this notice because records maintained either by DHS or USCIS or by Surviving Spouses Against Deportation (SSAD), a private non-profit group, show that you may have been the beneficiary of a petition ("Form I-130" or "Form I-129") filed by your deceased spouse, and that DHS or USCIS may have denied or revoked your spouse's petition because your spouse later died.

The purpose of this notice is to inform you of rights that you may have, depending on how the U.S. District Court in Los Angeles decides a case known as *Hootkins v. Napolitano,* No. 07-5696. Judge Christina A. Snyder has certified this case as a class action. Originally the name of the case was *Hootkins v. Chertoff,* but the name of the case was changed when Janet Napolitano succeeded Michael Chertoff as DHS Secretary.

You have legal rights and options that you may exercise before the Court enters judgment.
The Court will hold a hearing to decide whether the claims being made against DHS and USCIS, on your behalf, are correct.

What is this lawsuit about?

The lawsuit is about the requirements that an alien must satisfy in order to immigrate to the United States based on the alien's marriage to a citizen, if the citizen dies while the case is pending.

What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims (*in this case Class Representatives are Carolyn Robb Hookins, Ana Maria Moncayo-Gigax, Suzanne Henriette De Mailly, Sara Cruz Vargas de Fisher, Raymond Lockett, Elsa Cecilia Brenteson, Pauline Marie Gobeil, Rose Freeda Fishman-Corman, Khin Thidar Win, Li Ju Lu, Purita Manuel Pointdexter, Tracy Lee Rudl, Dieu Ngoc Nguyen*). The people together are a "Class" or "Class Members." The widow(er)s who sued – and all the Class Members like them – are called the Plaintiffs. The government agencies they sued (in this case DHS and USCIS) are called the Defendants. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the class.

The *Hootkins* case also involves claims by 9 Plaintiffs from outside the Ninth Circuit. These 9 Plaintiffs are *not* members of the Class, nor are any aliens whose cases are not governed by Ninth Circuit law.

Why is this a class action?

The Court decided that this lawsuit can be a class action and move towards a judgment because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that:

- The number of people whose U.S. citizen spouse died while Defendants were processing the petition for permanent resident status is numerous;
- There are legal questions and facts that are common to each of them;
- The Class Representatives' claims are typical of the claims of the rest of the Class;
- The Class Representatives, and the lawyers representing the Class will fairly and adequately represent the Class' interests;
- The common legal questions and facts are more important than questions that affect only individuals; and
- This class action will be more efficient than having many individual lawsuits.

More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order Certifying the Class, which is available at www.ssad.org.

THE CLAIMS IN THE LAWSUIT

What is the lawsuit about?

The government's interpretation of the immigration law has been that if an alien's citizen spouse died while the citizen's petition was pending, the petition could not be approved, and the alien could not immigrate. In 2006, in a case called *Freeman v. Gonzales,* 444 F.3d 1031 (9th Cir. 2006), the Ninth Circuit held that the Form I-130 could still be approved after the citizen's death.

In November 2007, USCIS provided guidance to its adjudicators for implementing the *Freeman* decision in Ninth Circuit cases. This guidance informs USCIS officers that in a Ninth Circuit case**,** under *Freeman,* USCIS can approve a petition after the petitioner has died. This guidance also advises USCIS adjudicators that, even if the petition is approved, the alien can immigrate only if a qualified "substitute sponsor" files an affidavit of support (Form I-864) on the alien's behalf, in place of the Form I-864 that either was filed or should have been filed by the deceased citizen. To qualify as a "substitute sponsor," the new sponsor must be the *spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien*. To permit the filing of the substitute sponsor's Form I-864, the guidance informs USCIS adjudicators that they should "revoke" the approval of the petition and then "reinstate" the approval if there are "humanitarian reasons" for doing so. If there is no substitute sponsor, or there is a substitute sponsor, but no showing that "humanitarian reasons" support reinstating the approval, the alien will not be able to immigrate, and the approval of the petition will be treated as having been revoked.

The November 2007 USCIS guidance also indicates that the *Freeman* case does not apply to any case unless the alien beneficiary had also filed a Form I-485 while the petitioner was alive. The guidance indicates that USCIS can still deny a petition if the alien beneficiary was going to apply for an immigrant visa, instead of for adjustment of status. It also indicates that if the alien was already in the United States, the petition could still be denied if the alien did not already apply for adjustment of status before the death of the United States citizen who filed the petition.

What claims do Plaintiffs make?

The Class Plaintiffs make three basic challenges to the November 2007 USCIS guidance:

- that the *Freeman* decision applies to *any* petitions filed by a citizen for his or her spouse, regardless of whether the alien had applied for adjustment of status before the citizen died;
- that alien does not have to obtain an affidavit of support from a substitute sponsor if the deceased visa petitioner had already executed a Form I-864;
- that the provision for the revocation of the visa petition approval if there is no substitute sponsor or no showing of "humanitarian reasons" is not valid under the law.

What is the response of DHS and USCIS?

DHS and USCIS maintain that the policy guidance provided to USCIS officers is consistent with the law. DHS and USCIS believe that *Freeman* applies to a petition only if the alien had also filed a Form I-485. DHS and USCIS also maintain that if there is no enforceable Form I-864 from a substitute sponsor or there is no showing of "humanitarian reasons: the alien is not eligible to immigrate.

Has the Court decided who is right?

No. The Court has not decided whether DHS and USCIS or the Plaintiffs are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Plaintiffs must prove their claims at a summary judgment hearing to be held April 20, 2009.

What are the Plaintiffs asking for?

The Plaintiffs want the Court to decide that *Freeman* applies to any petition that any citizen filed for any alien spouse, whether or not the alien filed a Form I-485 before the citizen died.

The Plaintiffs also want the Court to decide that an alien whose spouse has died does not need a valid and enforceable Form I-864 from a substitute sponsor. Since the Plaintiffs believe that no Form I-864 from a substitute sponsor is needed if the petitioner executed a Form I-864, they also believe that there is no need to "revoke" and "reinstate" the approval of the petition, and also that any such revocation is not legally valid. Plaintiffs also want the Court to decide that the regulation that provides for revocation of approval unless "humanitarian reasons" are shown is not legally valid.

Is there any relief available to widow(er)s now?

Under current DHS and USCIS policy, unless the widow(er) was married to the citizen petitioner for at least two years, a widow(er) whose citizen petitioner dies while the petition is pending may immigrate only if:

- the widow(er) filed a Form I-485 Adjustment of Status Application prior to the citizen's death;
- USCIS approves the citizen petitioner's petition under *Freeman;*
- the widow(er) submits in support of his or her Form I-485 a new Form I-864 from a substitute sponsor; and,
- USCIS decides, for humanitarian reasons, not to revoke the approval of the citizen's petition

No benefits are available to widow(er)s who do not meet these requirements now because the Court has not yet decided whether these requirements are consistent with the law. There is no guarantee that any benefits will be obtained. If they are, you will be notified about how to request benefits.

WHO IS IN THE CLASS?

Who is included in the lawsuit?

According to the court's ruling, the class action will include all alien spouses whose U.S. citizen spouses filed an immigrant petition (Form I-130 or I-129F) and filed an affidavit of support (Form I-864), and whose spouse died before the couple's two-year wedding anniversary. There are geographic limitations to this class action. The full definition of the two classes is:

- All aliens whose United States citizen spouse died before the couple's two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

- All aliens who, within ninety days of admission to the United States as a nonimmigrant fiance, married the petitioning United States citizen, and whose citizen spouse died before the couple's

two-year wedding anniversary, so long as he or she can also demonstrate that the citizen spouse filed an I-129F petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form 1-129F petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

The class action first requested approval of a nationwide class, but the court approved only those cases that fall within the Ninth Circuit. The Ninth Circuit includes the following states and territories: *Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Marianas Islands, Oregon, and Washington*. Therefore, those alien spouses whose citizen spouses filed the required forms and whose forms were adjudicated by a USCIS office located within the Ninth Circuit, or are pending there, or who resided there at the time of the spouse's death, are included.

Who is not included in the lawsuit?

The lawsuit does not include alien spouses whose U.S. citizen spouses did not file an immigrant petition (I-130 or I-129F) on their behalf. In such "non-petitioning" cases, a change in the law is needed. For more information on the legislation, please refer to the SSAD website (www.ssad.org).

The lawsuit does not include alien spouses whose citizen spouse filed for them, but whose petitions were adjudicated by USCIS offices outside the Ninth Circuit, unless at the time of the citizen spouse's death either the citizen spouse or the alien spouse resided within the Ninth Circuit.

I am still not sure if I am included.

If you are still not sure whether you are included, you can get free help at www.ssad.org, or by calling or writing to the lawyers in this case.

YOUR RIGHTS AND OPTIONS

What happens if I do nothing at all?

You don't have to do anything if you want to keep the possibility of receiving benefits from this lawsuit. By doing nothing you stay in the Class. If you do nothing and the Plaintiffs obtain benefits, either as a result of judgment or settlement, you will be notified about how to apply for benefits (or how to ask to be excluded from any settlement). Keep in mind that if you do nothing now, regardless of whether the Plaintiffs win or lose, you will not be able to sue, or continue to sue, DHS and USCIS – as part of any other lawsuit – about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders that the Court issues and judgments the Court makes in this class action.

Why would I ask to be excluded?

If you already have your own lawsuit against DHS or USCIS and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself from the Class – which also means you

remove yourself from the Class, and is sometimes called "opting-out" of the Class – you won't get any benefits from this lawsuit even if the Plaintiffs obtain them as a result of summary judgment or from any settlement (that may or may not be reached) between DHS and USCIS and the Plaintiffs. However, you may then be able to sue or continue to sue DHS and USCIS for benefits. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you start your own lawsuit against DHS or USCIS after you exclude yourself, you will have to hire and pay for your own lawyer (or get a lawyer who agrees to do it for free, or "pro bono") for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against DHS or USCIS, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

How do I ask the Court to exclude me from the Class (How do I opt-out)?

To ask to be excluded (to "opt-out"), you must send an "Exclusion Request" in the form of a letter sent by mail, stating that you want to be excluded from *Hootkins v. Napolitano*. Be sure to include your name and address, and sign the letter. You must mail your Exclusion Request, postmarked by **April 6, 2009**, to: *Hootkins v. Napolitano* Exclusions, Parrilli Renison LLC, 5285 SW Meadows Rd., Ste. 175, Lake Oswego, OR 97035. You may also get an Exclusion Request form at the website, www.ssad.org.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case?

The Court decided that the law firms of Parrilli Renison LLC, of Lake Oswego, Oregon, and the Law firm of Alan Diamante, of Los Angeles, California, are qualified to represent you and all Class Members. Together the law firms are called "Class Counsel." They are experienced in handling similar cases against DHS and USCIS. More information about these law firms, their practices, and their lawyers' experience is available at www.entrylaw.com.

Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer (or get a lawyer to agree to work for you for free, or "pro bono"). For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

How will the lawyers be paid?

If Plaintiffs prevail on the claims, Class Counsel may ask the Court for fees and expenses. If the Court grants Class Counsels' request, the fees and expenses would be paid separately by DHS and/or USCIS. If Defendants prevail, you will not be required to pay fees or expenses to Class Counsel.

THE HEARING

How and when will the Court decide who is right?

As long as the case isn't resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at a hearing for summary judgment. The hearing is set for April 20, 2009, in the United States District Court for the Central District of California, 312 N. Spring Street, Courtroom 5, Los Angeles, California 90012. During the hearing, the Judge will hear arguments from both sides to help the Judge reach a decision about whether the Plaintiffs or Defendants are right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win, or that they will get any benefits for Class Members.

Do I have to come to the hearing?

You do not need to attend the hearing. Class Counsel will present the case for the Plaintiffs, and DHS and USCIS will present the defenses. You and/or your own lawyer are welcome to come at your own expense.

Will I be given immigration benefits after the hearing?

If the Plaintiffs obtain benefits as a result of the hearing or a settlement, you will be notified about how to participate. We do not know how long this will take.

GETTING MORE INFORMATION

Are more details available?

Visit the website www.ssad.org, where you will find the Court's Order Certifying the Class, the Complaint submitted by the Plaintiffs, the Defendant's Answer to the Complaint, as well as an Exclusion Request form. You may also speak to one of the lawyers by calling (503) 597-7190, or by writing to *Hootkins v. Napolitano* Class Action, Parrilli Renison LLC, 5285 SW Meadows Rd., Ste. 175, Lake Oswego, OR 97035.

For further information, please visit the website: www.ssad.org